LABOUR BOARDS AND THE ANTI-INFLATION ACT.

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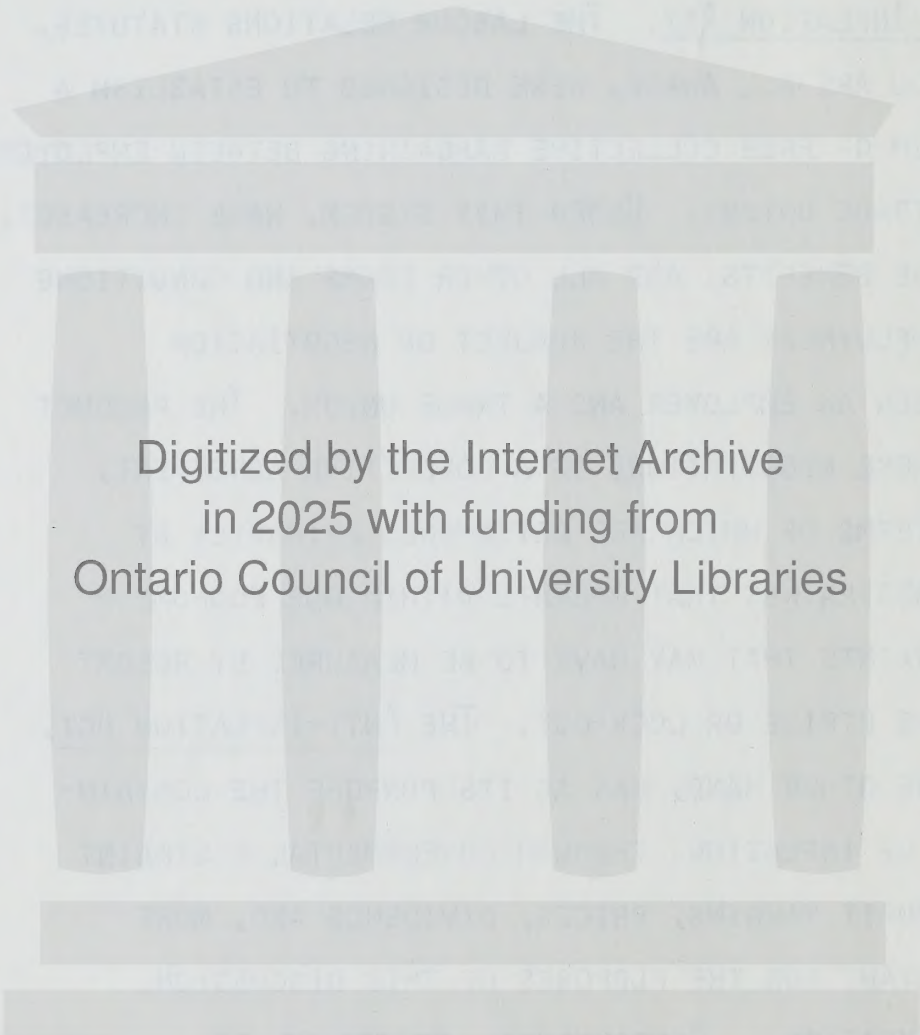
THERE EXISTS AN UNEASY RELATIONSHIP BETWEEN THE ADMINISTRATION OF THE VARIOUS CANADIAN LABOUR RELATIONS STATUTES, BOTH PROVINCIAL AND FEDERAL, AND THE ADMINISTRATION OF THE FEDERAL ANTI-INFLATION ACT. THE LABOUR RELATIONS STATUTES, AS YOU ARE ALL AWARE, WERE DESIGNED TO ESTABLISH A SYSTEM OF FREE COLLECTIVE BARGAINING BETWEEN EMPLOYERS AND TRADE UNIONS. UNDER THIS SYSTEM, WAGE INCREASES, FRINGE BENEFITS, AND ALL OTHER TERMS AND CONDITIONS OF EMPLOYMENT ARE THE SUBJECT OF NEGOTIATION BETWEEN AN EMPLOYER AND A TRADE UNION. THE PRODUCT OF THESE NEGOTIATIONS IS A COLLECTIVE AGREEMENT, THE TERMS OF WHICH ARE DETERMINED PRIMARILY BY THE RESTRAINGS THAT OPERATE WITHIN OUR ECONOMY — RESTRAINTS THAT MAY HAVE TO BE MEASURED BY RESORT TO THE STRIKE OR LOCK-OUT. THE ANTI-INFLATION ACT, ON THE OTHER HAND, HAS AS ITS PURPOSE THE CONTAINMENT OF INFLATION, THROUGH GOVERNMENTAL RESTRAINT OF PROFIT MARGINS, PRICES, DIVIDENDS AND, MOST IMPORTANT FOR THE PURPOSES OF THIS DISCUSSION, COMPENSATION. GOVERNMENTAL RESTRAINT OF COMPENSATION, HOWEVER, IS A GOAL THAT DOES NOT ALWAYS APPEAR TO BE COMPATIBLE WITH THE INTENT OF COLLECTIVE BARGAINING LEGISLATION. THE QUESTION IS WHETHER WAGE CONTROLS CAN ALLOW SCOPE FOR PRIVATE DETERMINATION OF WAGES, FRINGE



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BENEFITS AND, EVEN WHAT WE SOMETIMES REGARDED AS NON-MONETARY TERMS OF EMPLOYMENT, BY INDIVIDUAL UNIONS AND EMPLOYERS THROUGH THE COLLECTIVE BARGAINING PROCESS. TURNING THE QUESTION AROUND, ONE CAN ASK HOW COLLECTIVE BARGAINING, A PROCESS THAT IS SUBJECT ONLY TO THE RESTRAINTS THAT OPERATE WITHIN THE ECONOMY, CAN BE CONSISTENT WITH A SCHEME OF GOVERNMENTAL RESTRAINT OF COMPENSATION?

DESPITE THESE TROUBLING QUESTIONS, CO-EXISTENCE OF WAGE CONTROLS AND COLLECTIVE BARGAINING IS A FACT OF LIFE. THE FEDERAL ANTI-INFLATION ACT IS IN FORCE, IS BEING ADMINISTERED, AND IS CLEARLY CONSTITUTIONAL. CONCURRENTLY, FEDERAL AND PROVINCIAL COLLECTIVE BARGAINING STATUTES ARE IN FORCE, ARE BEING ADMINISTERED, AND ARE ACCEPTED AS BEING CONSTITUTIONAL. THE CO-EXISTENCE OF WAGE CONTROLS AND COLLECTIVE BARGAINING HAS BEEN EXPRESSLY RECOGNIZED BY THE ANTI-INFLATION BOARD. IN ITS STATEMENT ON COMPENSATION, DATED NOVEMBER 7, 1975, THE BOARD, AMONG OTHER THINGS, STATED:

> IT IS NOT THE INTENTION OF THE BOARD TO REPLACE THE COLLECTIVE BARGAINING OR OTHER PROCESSES BY WHICH COMPENSATION IS DETERMINED.

> IT IS EXPECTED THAT THE PARTIES WILL NEGOTIATE IN GOOD FAITH WITH A VIEW TO CONCLUDING AGREEMENTS UNDER THE GUIDELINES.

THESE ARE COMFORTING WORDS FROM THE ANTI-INFLATION BOARD, BUT THEY IGNORE SOME BASIC INCONSISTENCIES BETWEEN A SYSTEM OF GOVERNMENTAL ECONOMIC CONTROLS AND A SYSTEM OF FREE COLLECTIVE BARGAINING. SUCH INCONSISTENCIES CANNOT BE IGNORED, SINCE THE CONCURRENT ADMINISTRATION OF THESE TWO QUITE DIFFERENT SCHEMES IS BOUND TO GIVE RISE TO VERY REAL AND IMMEDIATE PROBLEMS THAT MUST BE RESOLVED BY THE ADMINISTRATORS OF THE TWO SCHEMES. ALREADY, THERE HAS ARISEN THE PROBLEM OF DETERMINING THE MEANING OF THE DUTY TO BARGAIN IN GOOD FAITH IN THE CONTEXT OF THE ARITHMETIC GUIDELINES; THE PROBLEM OF THE STATUS OF A COLLECTIVE AGREEMENT PENDING REVIEW OF THAT AGREEMENT BY THE ANTI-INFLATION BOARD; AND THE PROBLEM OF WHETHER THE RIGHT TO STRIKE IS REVIVED WHERE THERE IS A ROLL BACK BY THE ANTI-INFLATION BOARD. THESE PROBLEMS ALL RAISE THE QUESTION OF HOW THE COLLECTIVE BARGAINING STRUCTURE CAN BE RECONCILED WITH THE ANTI-INFLATION ACT.

THE UNENVIABLE TASK OF RECONCILING THESE TWO SCHEMES, IN ALL THREE OF THESE CASES, HAS FALLEN TO THE LABOUR BOARDS. THIS RATHER ONE-SIDED ALLOCATION OF RESPONSIBILITIES MAY BE EXPLAINED BY THE FACT THAT ANY CONFLICT BETWEEN THE TWO SCHEMES APPEARS TO MANIFEST ITSELF IN A COLLECTIVE BARGAINING PROBLEM. ONCE THE COLLECTIVE BARGAINING PROBLEM APPEARS, THE NATURAL REACTION OF THOSE PERSONS AFFECTED IS TO TURN TO A LABOUR BOARD FOR THE SOLUTION. THE LABOUR BOARD IS THEN FACED WITH THE PROBLEM OF FASHIONING A REMEDY THAT IS CONSISTENT WITH BOTH THE COLLECTIVE BARGAINING STATUTE THAT IT ADMINISTERS, AND WITH THE EXTERNAL ANTI-INFLATION LEGISLATION.

THE NEED TO FASHION A REMEDY CONSISTENT WITH THE COLLECTIVE BARGAINING STATUTE SHOULD BE OBVIOUS. LABOUR BOARDS, BEING ESTABLISHED TO INTERPRET AND ADMINISTER THEIR RESPECTIVE COLLECTIVE BARGAINING STATUTES, HAVE A PRIMARY DUTY TO FASHION A LABOUR RELATIONS REMEDY CONSISTENT WITH SUCH LEGISLATION.

THE REQUIREMENT THAT THE SOLUTION ALSO BE CONSISTENT WITH THE ANTI-INFLATION LEGISLATION HAS TWO ROOTS. FIRST, THERE IS THE COMMON SENSE PRINCIPLE THAT THE ENFORCEMENT OF ONE STATUTE SHOULD NOT RESULT

IN THE BREACH OF SOME OTHER STATUTE. THIS POINT WAS MADE QUITE CLEARLY BY THE CANADA LABOUR RELATIONS BOARD IN THE *CYPRUS ANVIL* CASE, WHEN IT STATED:

> IT IS CLEAR THAT THE CANADA LABOUR RELATIONS BOARD CANNOT IGNORE THE PROVISIONS OF THE *ANTI-INFLATION ACT* AND THE REGULATIONS MADE THEREUNDER IN INTERPRETING AND APPLYING THE PROVISION OF THE *CANADA LABOUR CODE* (PART V - INDUSTRIAL RELATIONS). FAILING THAT, AN EMPLOYER COULD BE COMPELLED UNDER THE *CANADA LABOUR CODE* TO DO SOMETHING WHICH IS ILLEGAL UNDER THE *ANTI-INFLATION ACT*. SINCE PARLIAMENT COULD OBVIOUSLY NOT HAVE INTENDED SUCH AN OUTCOME, THE PROVISIONS OF THE *CANADA LABOUR CODE* MUST BE RECONCILED, IF AT ALL POSSIBLE, WITH THOSE OF THE *ANTI-INFLATION ACT*. UNLESS THIS IS POSSIBLE, IT WOULD APPEAR THAT THE PROVISION OF THE *ANTI-INFLATION ACT* MUST PREVAIL.

WHAT IS INTERESTING ABOUT THIS STATEMENT IS THAT IT NOT ONLY PROVIDES A JUSTIFICATION FOR RECONCILING THE TWO SCHEMES, BUT IT ALSO STATES CLEARLY THAT, IF THE TWO SCHEMES ARE IRRECONCILABLE, THEN THE *ANTI-INFLATION ACT* TAKES PRECEDENCE TO THE OTHER FEDERAL STATUTE.

THE APPROACH TAKEN ASSUMES THAT, TO THE EXTENT THERE IS AN INCONSISTENCY BETWEEN THE TWO FEDERAL STATUTES, THE CANADA LABOUR CODE HAS BEEN IMPLIEDLY AMENDED BY THE ANTI-INFLATION ACT SO AS TO GIVE WAY TO THAT LATTER STATUTE.

THE SECOND REASON FOR LABOUR BOARDS BEING REQUIRED TO ARRIVE AT A REMEDY CONSISTENT WITH THE ANTI-INFLATION ACT IS ONE THAT APPLIES ONLY TO THE PROVINCIAL LABOUR BOARDS. CONSTITUTIONALLY, VALID PROVINCIAL LEGISLATION MUST GIVE WAY TO VALID FEDERAL LEGISLATION WHERE THERE IS ANY CONFLICT BETWEEN THE TWO STATUTES. THIS PRINCIPLE OF THE CONSTITUTION WAS RECOGNIZED BY THE LABOUR BOARD OF BRITISH COLUMBIA IN THE PACIFIC PRESS CASE, WHEN IT STATED:

> "....THE ANTI-INFLATION ACT HAS BEEN ENACTED BY THE PARLIAMENT OF CANADA. ITS VALIDITY HAS BEEN UPHELD BY THE SUPREME COURT OF CANADA. AS A FEDERAL STATUTE, IT IS CONSTITUTIONALLY PARAMOUNT TO PROVINCIAL LABOUR LAWS AND COLLECTIVE AGREEMENTS WHICH HAVE BEEN ARRIVED AT UNDER THAT LAW. UNMISTAKABLY, THIS BOARD CANNOT DIRECT AN EMPLOYER TO PERFORM ACTS WHICH WOULD PLACE THAT EMPLOYER IN BREACH OF THE ANTI-INFLATION ACT."

APPLYING THIS APPROACH, ANY INCOMPATABILITY BETWEEN A PROVINCIAL STATUTE AND A FEDERAL STATUTE IS RESOLVED BY THE DOCTRINE THAT THE FEDERAL STATUTE HAS OVER-RIDING EFFECT.

BOTH APPROACHES SUBJUGATE THE COLLECTIVE BARGAINING STATUTE TO THE WAGE CONTROL STATUTE. SUBJUGATION, HOWEVER, ONLY OCCURS WHERE THERE IS AN INCOMPATABILITY BETWEEN THE TWO KINDS OF LEGISLATION. THE MAJOR QUESTION FACING THE LABOUR BOARDS WHEN DEALING WITH A COLLECTIVE BARGAINING PROBLEM THAT CONTAINS IMPLICATIONS FOR THE ANTI-INFLATION PROGRAM IS WHETHER THERE IS IN FACT A SUFFICIENT INCOMPATIBILITY BETWEEN THE COLLECTIVE BARGAINING LEGISLATION AND THE ANTI-INFLATION LEGISLATION TO JUSTIFY A REFUSAL TO APPLY WHAT IS THE OBVIOUS COLLECTIVE BARGAINING SOLUTION.

THERE ARE AT LEAST TWO REASONS FOR THE DIFFICULTY OF THIS TASK. FIRST, THE DETERMINATION OF INCOMPATABILITY REQUIRES THE LABOUR BOARD TO EXAMINE AND INTERPRET THE ANTI-INFLATION LEGISLATION. INTERPRETATION OF THE ANTI-INFLATION ACT SHOULD BE THE PRIMARY RESPONSIBILITY OF THOSE THAT ADMINISTER THAT LEGISLATION, AND NOT OF THE LABOUR BOARDS. NEVERTHELESS, THE NEED TO DETERMINE THE EXTENT OF ANY INCOMPATIBILITY MEANS THAT THE LABOUR BOARDS MUST SAIL INTO THE LARGELY

UNCHARTED WATERS OF THE ANTI-INFLATION LEGISLATION. THOSE WHO SAIL INTO THESE WATERS HAVE BEEN GIVEN ONLY LIMITED ASSISTANCE BY THE ANTI-INFLATION BOARD OR THE ADMINISTRATOR — OFFICIAL STATEMENTS, PRESS RELEASES, AND MAJOR POLICY ADDRESSES, BEING THE ONLY NAVIGATIONAL AIDS PROVIDED. THE LACK OF AUTHORITATIVE INTERPRETATION FROM THESE SOURCES PUTS THE LABOUR BOARD IN THE UNENVIABLE POSITION OF HAVING TO PROVIDE BY ITSELF SOME INTERPRETATION OF THE ANTI-INFLATION ACT AND THE REGULATIONS. THE RESULT IS THAT LABOUR BOARDS RUN THE RISK OF CREATING THE APPEARANCE THAT THEY ARE ACTING AS ANTI-INFLATION BOARDS, AND NOT AS LABOUR BOARDS.

DETERMINING THE EXTENT OF THE INCOMPATIBILITY IS MADE EVEN MORE DIFFICULTY BY THE CONFLICT OF RESPONSIBILITIES THAT FACES A LABOUR BOARD WHEN DEALING WITH THIS TYPE OF PROBLEM. THE PRIMARY RESPONSIBILITY OF A LABOUR BOARD IS TO ADMINISTER COLLECTIVE BARGAINING LEGISLATION, GIVING TO IT AN INTERPRETATION THAT IS CONSISTENT WITH THE REALITIES OF THE COLLECTIVE BARGAINING PROCESS. A COLLATERAL RESPONSIBILITY, AND ONE THAT HAS BEEN MENTIONED EARLIER, IS TO ENSURE THAT THE COLLECTIVE BARGAINING PROCESS OPERATES IN A MANNER THAT IS IN ACCORD WITH THE GENERAL LAW OF THE LAND. THE TROUBLESOME QUESTION CONCERNS THE POINT AT WHICH

A BOARD'S PRIMARY RESPONSIBILITY MUST GIVE WAY TO THIS COLLATERAL RESPONSIBILITY. A BOARD'S PRIMARY RESPONSIBILITY DICTATES AN APPROACH OF FINDING NO INCOMPATIBILITY BETWEEN THE TWO TYPES OF LEGISLATION IN EACH GIVEN SITUATION. TAKING THIS APPORAHC, THE COLLECTIVE BARGAINING STATUTE IS ALLOWED TO SURVIVE AND CO-EXIST WITH THE ANTI-INFLATION STATUTE. BUT TO PURSUE THIS APPROACH TOO FAR WOULD REQUIRE A BOARD TO STRAIN THE MEANING OF THE ANTI-INFLATION STATUTE BEYOND RECOGNITION. AT SOME POINT, THEREFORE, THE COLLATERAL RESPONSIBILITY MUST BECOME PARAMOUNT, FORCING A BOARD TO RENDER ITS OWN STATUTE INOPERATIVE.

THE THREE PARTICULAR PROBLEMS ALREADY ENCOUNTERED ILLUSTRATE THE DIFFICULTIES FACED BY THE LABOUR BOARDS. THE PROBLEM OF DEFINING THE DUTY TO BARGAIN IN GOOD FAITH IN THE CONTEXT OF THE ARITHMETIC GUIDELINES WAS FACED BY THE ONTARIO BOARD IN THE C.I.L. CASE. IN THAT CASE, THE UNION COMPLAINED THAT THE EMPLOYER'S CONDUCT AT THE BARGAINING TABLE AMOUNTED TO A FAILURE TO BARGAIN IN GOOD FAITH. THE EMPLOYER HAD TAKEN THE POSITION THAT IT NEED ONLY OFFER THE MAXIMUM PERMITTED BY THE ARITHMETIC GUIDELINES, AND DISCUSS HOW THIS OFFER WAS CALCULATED. A COROLLARY OF THIS POSITION WAS THE EMPLOYER'S REFUSAL TO PROVIDE ANY FURTHER JUSTIFICAITON OR DISCUSSION OF ITS OWN POSITION, OR TO DISCUSS THE UNION'S

CLAIM TO AN HISTORICAL RELATIONSHIP. THE BOARD HELD THAT THIS CONDUCT, FALLING SHORT OF THE FULL DISCUSSION REQUIRED BY THE STATUTE, AMOUNTED TO A FAILURE TO BARGAIN IN GOOD FAITH. THE EMPLOYER'S DEFENCE THAT IT WAS MERELY COMPLYING WITH THE LETTER AND SPIRIT OF THE ANTI-INFLATION GUIDELINES WAS REJECTED. THE EXISTENCE OF THE ANTI-INFLATION GUIDELINES, ACCORDING TO THE BOARD, DID NOT OBVIATE THE REQUIREMENT TO ENTER INTO THE FULL AND FREE DISCUSSION REQUIRED BY THE Labour Relations Act.

A CLOSE EXAMINATION OF THE BOARD'S DECISION WILL REVEAL THAT IT IS BASED ON AN UNDERLYING CONCLUSION THAT, IN THIS SITUATION, THERE WAS NOT A SUFFICIENT INCOMPATIBILITY BETWEEN THE TWO STATUTORY SCHEMES SO AS TO RENDER THE DUTY TO BARGAIN IN GOOD FAITH INOPERATIVE. THE BOARD CONCLUDED THAT, SINCE THE Anti-Inflation Act WAS INTENDED TO REGULATE THE CONTENT OF COLLECTIVE AGREEMENT WHILE THE Labour Relations Act WAS INTENDED ONLY TO REGULATE THE CONDUCT OF BARGAINING, THE TWO STATUTES COULD CO-EXIST. THIS CONCLUSION REQUIRED THE BOARD TO GIVE AN INTERPRETATION TO THE Labour Relations Act AND, COLLATERALLY, TO THE Anti-Inflation Act. THE COLLATERAL INTERPRETATION WAS BASED IN PART UPON A STATEMENT OF THE ANTI-INFLATION BOARD, ALREADY QUOTED, TO THE EFFECT THAT IT DID NOT

INTEND TO REPLACE THE COLLECTIVE BARGAINING PROCESS AND EXPECTED THE PARTIES TO NEGOTIATE IN GOOD FAITH WITH A VIEW TO CONCLUDING AGREEMENTS UNDER THE GUIDELINES. EVEN THOUGH THE BOARD CONCLUDED THAT THE TWO STATUTES COULD CO-EXIST, IT DID NOT GO SO FAR AS TO SAY THAT THE TWO SCHEMES WERE MUTUALLY EXCLUSIVE. THE BOARD RECOGNIZED THAT THERE MIGHT BE SOME OVERLAP AND THAT, WHERE THERE WAS OVERLAP, THE TWO SCHEMES MUST BE HARMONIZED. IN THIS REGARD, THE BOARD STATED:

> "THE FULL SURVIVAL OF THE DUTY TO BARGAIN IN GOOD FAITH DOES NOT MEAN THAT THE ANTI-INFLATION ACT IS NOT A FACTOR TO BE TAKEN INTO ACCOUNT DURING COLLECTIVE NEGOTIATIONS. OBVIOUSLY THE EXISTENCE OF THIS STATUTE WILL INFLUENCE THE CONTENT OF COLLECTIVE AGREEMENTS. TO REFUSE TO DISCUSS THE IMPACT OF THE ANTI-INFLATION GUIDELINES AT ALL WOULD BE A FAILURE TO BARGAIN IN GOOD FAITH, SINCE A FACTOR OF THIS SIGNIFICANCE SHOULD BE THE SUBJECT OF FULL DISCUSSION DURING COLLECTIVE NEGOTIATIONS. A REFUSAL TO DISCUSS THE FULL IMPLICATIONS OF THE GUIDELINES BY INSISTING ON DEALING WITH ONLY ONE ASPECT OF THE RESTRAINTS HAS THE SAME EFFECT, AND IS ALSO A FAILURE TO BARGAIN IN GOOD FAITH...."

In short, what the Board did in this case was to attempt to determine the extent of the incompatibility between the two statutory schemes by examining the intent and purpose of each statute. Having done this, the Board concluded that, in the circumstances of the particular case, it could fulfill its primary responsibility of administering the collective bargaining legislation, and also its collateral responsibility of ensuring that it not act in conflict with the general laws of the land.

The resolution of the question of the status of a collective agreement pending review by the Anti-Inflation Board, however, required a different conclusion. This question was dealt with by both the British Columbia Board, in the Pacific Press case, and by the Ontario board, in the Mole Construction case. The essential facts in both cases were virtually identical. In each case, a union was attempting to fully enforce a collective agreement containing monetary terms in excess of the arithmetic guidelines prior to approval of that agreement by the Anti-Inflation Board. Moreover, in each case, the parties had NOT specified that the full implementation of the collective agreement was to be conditional upon approval by the Anti-Inflation Board. The difficult problem facing the labour boards was that the collective agreements, according to the collective

BARGAINING LAW OF THE TWO PROVINCES, WERE IN FULL FORCE, YET FULL ENFORCEMENT OF THE COLLECTIVE AGREEMENTS PRIOR TO ANTI-INFLATION BOARD APPROVAL MIGHT PLACE THE EMPLOYER IN CONTRAVENTION OF THE ANTI-INFLATION ACT. THERE EXISTED, THEREFORE, A REAL POSSIBILITY OF A SERIOUS INCOMPATIBILITY BETWEEN THE COLLECTIVE BARGAINING STATUTE AND THE ANTI-INFLATION STATUTE.

THE POSSIBILITY OF AN INCOMPATIBILITY REQUIRED THE BOARDS TO GIVE AN INTERPRETATION TO THE ANTI-INFLATION ACT AND ITS REGULATIONS IN ORDER TO DETERMINE WHEN A CONTRAVENTION MIGHT OCCUR. THIS EXERCISE WAS NOT WITHOUT DIFFICULTY, SINCE THIS ASPECT OF THE LEGISLATIVE SILENCE IS FAR FROM CLEAR. ALTHOUGH THE ACT MAKES IT AN OFFENCE FOR A PERSON TO CONTRAVENE THE GUIDELINES BY PAYING AN AMOUNT IN EXCESS OF THE GUIDELINES, THE GUIDELINES DO NOT APPEAR TO BECOME FULLY FORMULATED UNTIL THE ANTI-INFLATION BOARD HAS DEALT WITH THE FACTOR OF THE "HISTORICAL RELATIONSHIP" AND OTHER EXCEPTIONS. COULD IT BE SAID THAT AN EMPLOYER WAS KNOWINGLY CONTRAVENING THE GUIDELINES BY PAYING MORE THAN THE ARITHMETIC FORMULA PRIOR TO THE ANTI-INFLATION BOARD HAVING CONSIDERED THE COLLECTIVE AGREEMENT? IN BOTH CASES, THE UNION AND EMPLOYER DISAGREED ON THE ANSWER TO THIS QUESTION.

THE BRITISH COLUMBIA BOARD FOUND THAT THE TERMS OF THE STATUTE DID NOT POINT TO AN OBVIOUS ANSWER, BUT THAT, GIVEN "THE ANTI-INFLATION ACT AS A WHOLE, ITS STRUCTURE, ITS OBJECTIVES, AND ITS ACTUAL ADMINISTRATION", THE EMPLOYER'S CONSTRUCTION OF THE ACT WAS MORE PERSUASIVE. INFLUENCING THIS CONCLUSION WERE STATEMENTS MADE BY THE CHAIRMAN OF THE ANTI-INFLATION BOARD IN A PRESS RELEASE TO THE EFFECT THAT AMOUNTS IN EXCESS OF THE GUIDELINES SHOULD NOT BE PAID UNTIL APPROVED BY THE A.I.B., AND STATEMENTS MADE BY THE ADMINISTRATOR IN A MAJOR POLICY ADDRESS. REFERRING TO THESE STATEMENTS, THE BRITISH COLUMBIA BOARD STATED:

> "WHAT IS THE SIGNIFICANCE OF THESE COMMENTS? IN OUR VIEW, SIMPLY THIS. MESSRS. PEPIN AND TERSLEY HAVE THE PRIMARY AUTHORITY AND RESPONSIBILITY FOR THE INTERPRETATION OF THE ANTI-INFLATION ACT. THEY ARE AGREED ON A PARTICULAR INTERPRETATION OF THAT ACT. TRUE, THEIR VIEWS ARE NOT ULTIMATELY DECISIVE AND MIGHT BE OVERRULED ON APPEAL TO THE ANTI-INFLATION APPEAL TRIBUNAL AND THENCE TO THE COURTS. HOWEVER, THESE JUDGMENTS HAVE NOT BEEN OVERTURNED AS YET. IF THEIR INTERPRETATION APPEARS TO BE ONE WHICH THE LANGUAGE AND THE PRINCIPLES OF THEIR STATUTE WILL

> REASONABLY BEAR, THEN THIS BOARD SHOULD DEFER TO THEIR CONCLUSIONS. WE SHOULD NOT LIGHTLY TAKE A TACK WHICH WILL PLACE THIS BOARD, ACTING UNDER THE LABOUR CODE ON A COLLISION COURSE WITH THE ADMINISTRATOR, ACTING UNDER THE ANTI-INFLATION ACT — ESPECIALLY WHEN IT IS THE EMPLOYER WHICH WILL BE IN THE MIDDLE."

HAVING REACHED THE CONCLUSION THAT THE EMPLOYER'S INTERPRETATION OF THE ANTI-INFLATION ACT WAS MORE PERSUASIVE, THE BRITISH COLUMBIA BOARD CONCLUDED THAT IT WOULD NOT BE A PROPER EXERCISE OF ITS JURISDICTION TO GRANT THE RELIEF REQUESTED UNDER THE LABOUR CODE. THIS WAS A CASE THEN, WHERE THERE WAS A SUFFICIENT INCOMPATIBILITY BETWEEN THE COLLECTIVE BARGAINING STATUTE AND THE ANTI-INFLATION ACT SO AS TO JUSTIFY A REFUSAL BY THE BOARD TO EXERCISE ITS PRIMARY RESPONSIBILITY OF ADMINISTERING THE LABOUR CODE.

THE ONTARIO BOARD DID NOT GO QUITE AS FAR AS ITS BRITISH COLUMBIA COUNTERPART. THE BOARD, ALTHOUGH DETERMINING THAT THE EMPLOYER'S REFUSAL TO PAY THE FULL AMOUNT OF THE WAGE INCREASE WAS IN BREACH OF THE COLLECTIVE AGREEMENT, ALSO CONSIDERED THAT THE INTERPRETATION OF THE ANTI-

Inflation Act adopted by the Administrator was not unreasonable. Given these circumstances, the Board made no order for the enforcement of the collective agreement, but left it to the parties to work out their own remedy, suggesting that any amount in excess of the guidelines might be set aside until a final determination had been made under the Anti-Inflation Act. This approach eliminated any immediate incompatibility between the collective bargaining statute and the Anti-Inflation Act, leaving it to the parties to arrive at a mutually acceptable resolution of the matter. Apparently, this has occurred since the matter has not been referred back to the Board.

Even though slightly different results were reached, both labour boards went through the same basic exercise. Both labour boards looked to the Anti-Inflation Act to determine the extent of the incompatibility; both labour boards were faced with less than authoritative interpretations rendered by the Anti-Inflation Board and the Administrator; both labour boards recognized that if a real incompatibility existed, then the collective bargaining statute must give way; and both boards were faced with the difficult task of balancing their primary responsibility to administer the collective bargaining statute against their collateral responsibility to uphold the general law of the land.

THE LATEST PROBLEM TO REACH THE LABOUR BOARDS CONCERNS THE QUESTION OF WHETHER THE RIGHT TO STRIKE IS REVIVED AFTER A COLLECTIVE AGREEMENT HAS BEEN ROLLED BACK BY THE ANTI-INFLATION BOARD. THIS IS A MATTER THAT HAS BEEN DEALT WITH BY THE CANADA LABOUR RELATIONS BOARD IN THE CYPRUS ANVIL CASE, AND WILL BE DEALT WITH SHORTLY BY THE ONTARIO BOARD. BECAUSE WE WILL BE DEALING WITH THIS MATTER SHORTLY, YOU CAN UNDERSTAND THAT I AM UNABLE TO COMMENT SPECIFICALLY ON THE PROBLEM. IT IS SAFE TO SAY, HOWEVER, THAT OUR BOARD WILL AGAIN BE FACED WITH THE GENERAL QUESTION OF WHETHER THE PROVISIONS OF THE LABOUR RELATIONS ACT ARE INCOMPATIBLE WITH THE INTENT AND PURPOSE OF THE ANTI-INFLATION ACT.

I HOPE THAT THESE REMARKS HAVE CLEARED UP SOME OF THE UNDERSTANDABLE BEWILDERMENT THAT HAS BEEN CAUSED BY RECENT LABOUR BOARD DECISIONS RELATING TO THE ANTI-INFLATION ACT. IT SHOULD BE RECOGNIZED THAT THE LABOUR BOARDS, JUST LIKE EMPLOYERS AND UNIONS, ARE CAUGHT IN THE MIDDLE BETWEEN THE OPPOSING FORCES OF THE COLLECTIVE BARGAINING STATUTE AND THE ANTI-INFLATION ACT. THE LABOUR BOARDS HAVE A PRIMARY RESPONSIBILITY TO ADMINISTER THE COLLECTIVE BARGAINING STATUTE, AND ALSO A COLLATERAL RESPONSIBILITY TO UPHOLD THE GENERAL LAW OF THE LAND. IDEALLY, LABOUR BOARDS SHOULD MAKE DETERMINATIONS THAT SATISFY BOTH

RESPONSIBILITIES. GIVEN THE UNDERLYING TENSION BETWEEN THE TWO QUITE DIFFERENT STATUTORY SCHEMES, HOWEVER, IT IS AN IDEAL THAT IS EXTREMELY DIFFICULT TO ACHIEVE.